In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 2421 of 2003

Date of Decision: September 6, 2006

Magher Singh

…Petitioner

Versus

Union of India & others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Bhim Sen Sehgal, Advocate, with
Mr. Rajesh Sehgal, Advocate,
for the petitioner.

Mr. Kamal Sehgal, Senior Panel Counsel, with
Mr. S.K. Sharma, Central Govt. Counsel,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The petitioner was enrolled in the Indian Army on 22.9.1956. While in service, the petitioner suffered from Tuberculosis. Since the ailment of the petitioner could not be cured in the Military Hospital and T.B. Centres, he was brought before the Invalidating Medical Board which declared the petitioner unfit for any military duty and downgraded him to the lower medical category 'EEE' with 100% disability. On 27.3.1962, the petitioner was invalidated out of the military service after rendering 5 years 6

months and 6 days service. The disability/disease of the petitioner was held to be attributable to military service and he was granted disability pension consisting of service element and disability element for 100% disability firstly from 28.3.1962 to 15.7.1964, which was extended from time to time after the Re-survey Medical Boards held at Military Hospital Ambala Cantt. as follows:-

i) from 28.3.1962 to 15.7.1964 at 100%

ii) from 16.7.1964 to 25.10.1965 at 80%

iii) from 26.10.1964 to 9.2.1968 at 60%

iv) from 10.2.1962 to 3.5.1970 at 40%

v) from 4.5.1970 to 5.7.1972 at 20%

vi) from 6.7.1972 for life 20% (but the same was accepted as less than 20% by the CCDA(P).

vii) from 16.4.1999 to 15.4.2001 at 20%

viii) from 16.4.2001 to 21.3.2011 (which he is continued to get).

It is appropriate to mention that vide order dated 4.1.1973 (P-1) the benefit of temporary disability pension which was granted to the petitioner for the period from 4.5.1970 to 15.6.1972 was further extended from 16.6.1972 to 5.7.1972 at the rate of Rs. 25/- p.m. plus ad hoc increase @ Rs. 15/- p.m. and the same was discontinued as per final order w.e.f. 6.7.1972 as disability of the petitioner was assessed at less than the pensionable degree. In the said order it has further been stipulated that in case the petitioner feels dissatisfied with the said decision, he can appeal within 12 months

from November 1972. In this manner, the respondents completely stopped the pension of the petitioner due to disability being less than 20%.

Thereafter the petitioner made representations to the respondent authorities for illegal stoppage of the disability pension. Once such representation dated 26.10.1995 has been placed on record as Annexure P-2. The representation of the petitioner was rejected by the respondent authorities vide order dated 14.11.1995 (P-3) on the ground that the petitioner did not prefer any appeal against the decision of the CCDA(P). The petitioner again made a representation dated 7.10.1998 (P-4) to the respondent authorities for brining him before the Re-survey Medical Board in accordance with Army Order 152 of 1973, which permitted the Re-survey Medical Board in case of substantial increase in the disability. The aforesaid representation was followed by reminders dated 9.12.1998 and 10.2.1999 (P-5 and P-6 respectively). The Record Office of the respondents, vide its letter dated 26.2.1999 gave sanction for holding the Re-survey medical Board (P-7). The Re-survey Medical Board sent its recommendations dated 16.4.1999 and accepted the percentage of last Re-survey medical Board which was held on 6.7.1972. However, the Record Office while sending the papers to the CCDA(P) Allahabad, in para 4(b) of letter dated 24.5.1999, recorded the last percentage accepted as ‘less than 20%’. It has been asserted by the petitioner that the last Board, which was held on 6.7.1972, assessed his disability as 20% and not less than 20%. It has further been claimed

that on 6.7.1972 the Medical Board held the disability percentage at 20% with the observation that the disability remained static. However, the percentage of disability was reduced by the CCDA(P) erroneously consequently disability element and service element was also stopped without any justification.

The petitioner through his counsel has served a Notice of Demand, dated 12.6.1999 (P-14) upon the respondents on 12.6.1999 and when no action was taken he approached this Court by filing C.W.P. No. 11836 of 1999. The aforementioned writ petition was, however, dismissed as withdrawn vide order dated 24.8.1999 with liberty to pursue such remedy as may be admissible in accordance with law (P-15).

The counsel for the petitioner on 25.8.1999 received a telegram from the respondents whereby the petitioner was granted disability pension at the rate of Rs. 90/- per month i.e. for 20% disability from 16.4.1999 to 15.4.2001 (P-16). The petitioner through counsel again served a notice of demand, dated 1.11.1999 for the release of disability pension/service element for the interregnum period from 6.7.1972 to 15.4.1999 (P-17), which was followed by a reminders dated 10.1.2000 and 26.2.2001 (P-18 & P-19 respectively). It is appropriate to mention here that in the meanwhile the respondents also issued P.P.O. No. DRA/6601/99 and granted disability pension consisting of disability element as well as service element for the period from 16.4.1999 to 15.4.2001. The service element was granted at the rate of Rs. 375/- per month and disability

element was granted at the rate of Rs. 90/- per month for 20% disability.

The petitioner was again brought before the Re-survey Medical Board and his disability pension was again extended for 20% disability from 16.4.2001 to 21.3.2011 i.e. for a period of 10 years and the petitioner is getting disability pension consisting of service element as well as disability element.

Since the claim of the petitioner for grant of disability pension/service element for the interregnum period from 6.7.1972 to 15.4.1999 was not settled by the respondents, he again got served a Notice of demand dated 29.4.2002 followed by a reminder dated 19.8.2002 (P-20 & P-21 respectively).

When nothing was heard from the respondent authorities in respect of aforementioned claim, the petitioner eventually has approached this Court by filing instant petition under Article 226 of the Constitution praying for issuance of writ of mandamus directing the respondents to grant disability pension consisting of service element as well as disability element from 6.7.1972 to 15.4.1999 for the interim period, inasmuch as, the disability percentage of the petitioner was assessed as 20% by the Resurvey Medical Board in the year 1972 but the same was reduced by the Chief Controller of Defence Accounts (Pension) to less than 20%. An alternate prayer has also been made for grant of service element of disability from 6.7.1972 to 15.4.1999 as per the provisions of Regulation 186(2) of the Pension Regulations for the Army.

The respondents have filed a detailed written statement wherein the factual position with regard to invaliding the petitioner, initial grant of disability pension consisting of both the elements, assessment of disability of the petitioner by the Re-survey Medical Board from time to time, stopping of disability pension for the period from 6.7.1972 to 15.4.1999 and again granting the same w.e.f. 16.4.1999 has been admitted. However, the respondents have controverted the claim of the petitioner for grant of disability pension consisting of service element as well as disability element from 6.7.1972 to 15.4.1999 i.e. for the interim period, mainly on the ground of delay as according to the respondents the petitioner has approached this Court after lapse of almost 30 years. It is also asserted that the Re-survey Medical Board, held from time to time, has assessed the disability as nil percentage with effect from 6.7.1972 and, therefore, the petitioner is not eligible for grant of disability pension under the provisions of Para 173 of Pension Regulations for the Army, 1961 (Part-I). It has further been asserted that the petitioner had not put in required number of years of service entitling him to get service element of disability pension and he is not entitled to claim any amount by way of pension on the ceaseation of the disability. According to the respondents, the petitioner had rendered 5 years and 186 days of qualifying service, at the time of his invalidation from service, and thus, he is not eligible for grant of service element because an individual is entitled to invalid pension/service element if the minimum period of qualifying service

at his credit is 10 years as per Regulation 198 of the Pension Regulations.

Controverting the averments of the written statement, the petitioner also filed a replication, inter alia, pointing out various instances wherein similarly situated persons were granted the benefit of disability pension even after a long delay of 40 years or more. The petitioner also specifically controverted the other ground of the respondents for denying him the benefit of service element for the aforementioned period by claiming that the provision of Regulation 198 of the Pension Regulations for the Army, 1961, Part-I, is not applicable to his case, inasmuch as, the same applicable in such cases where the disability is neither attributable nor aggravated to military service. In the case of the petitioner, it is an admitted position that his disability was attributed and aggravated due to military service.

At the hearing, learned counsel for the petitioner at the very outset confined the claim of the petitioner only for the grant of service element for the period from 6.7.1972 to 15.4.1999.

The writ petition is allowed in the above terms with no orders as to costs.

(M.M. KUMAR)
JUDGE

September 6, 2006
Pkapoor